



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sanford's Domestic/International Trade

File: B-230580.2

Date: September 6, 1988

DIGEST

Noncompliance with solicitation provision requiring prices to be based on current published price list and substantial sales at those prices warrants rejection of an offer since the procuring agency needs the information to establish that price of items offered to be included on Federal Supply Schedule is most advantageous to the government.

DECISION

Sanford's Domestic/International Trade protests the rejection of its offer submitted in response to solicitation No. M2-Q1-88, issued by the Veterans Administration (VA) Marketing Center, Hines, Illinois, to obtain multiyear, multiple-award, Federal Supply Schedule (FSS) contracts to supply medical equipment and supplies. Sanford questions the VA's rejection of its offer of a Flo-Tem II blood warmer for lack of prior commercial sales of this item. We deny the protest.

Sanford's protest here raises the same issue the firm asserted in a protest under a virtually identical 1986 VA solicitation (No. M3-03-86). As with the current solicitation, the prior solicitation included several clauses pertaining to the submission of pricing data for the purpose of negotiating prices for the awarded items. One clause specified that concessions in prices afforded the government must be based on current published commercial price lists showing "established catalog or market prices," to be submitted with each offer. The clause warned that special price lists printed for the purpose of this offer and showing only net prices to the government would not be accepted. Another clause provided that the prices for items to be awarded under the solicitation would be negotiated on the basis of discounts from the offeror's established catalog or market prices. Finally, the solicitation required offerors to certify that their prices are based on

043174/136738

established catalog or market prices of commercial items and that substantial quantities of the items have been sold to the general public at those prices.

In response to the 1986 solicitation, Sanford's offered the Flo-Tem II blood warmer at a 2-percent discount from net prices set forth on a handwritten price list included with its offer. Sanford's also indicated that it had no sales for the preceding 3 fiscal years and, more specifically, no prior sales of the Flo-Tem II blood warmer. The VA rejected this offer based on the firm's failure to furnish a current published commercial price list and the lack of any prior commercial sales of this item. Sanford's then protested the VA's action.

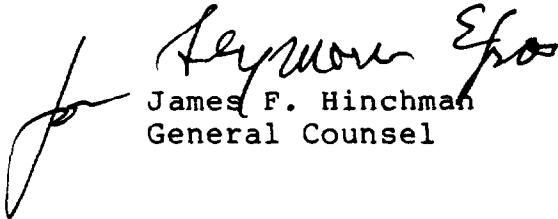
We denied the protest in our decision, Sanford's Domestic/International Trade, B-226605, July 10, 1987, 87-2 CPD ¶ 33, stating that the purpose of the standard clause requiring submission of current published commercial price lists is to ensure that offered discount prices for items listed on the FSS are based on prices that have been tested by the offeror in the commercial marketplace. We further noted that the additional requirement that offerors certify to substantial commercial sales of the item goes the extra step of insuring that its item prices have not merely been offered to the commercial public--leaving open the possibility that the prices were rejected by the market-place--but that the prices have been reasonable enough to generate sales of the items. In other words, the clauses ensure that the offered prices are the best prices available from the firm. We concluded that the rejection of the protester's offer was proper in view of the firm's failure to comply with either of these two requirements.

Sanford's, in response to our decision, has attempted to correct these deficiencies in its current offer. Instead of furnishing a handwritten price list of its net and discount prices for this item, Sanford's submitted the manufacturer's commercial price list. Sanford's also referenced the manufacturer's direct sales of this item to both the government and commercial customers. Sanford's still certified, however, that it did not have any commercial sales of this item in the prior year, and its offer was rejected.

In view of the protester's continued lack of commercial sales for the Flo-Tem II blood warmer, the VA's rejection of the firm's offer was proper. The manufacturer's sales records only indicate the viability of the manufacturer's commercial prices. Without similar evidence from Sanford's that it has successfully sold the item, at whatever price, there simply is no way of determining Sanford's own best

price; Sanford's adoption of the manufacturer's price list for the purpose of this procurement does not satisfy the challenged clauses' intent of ensuring through a firm's own pricing history that its FSS prices will be the firm's best prices. The information furnished thus does not satisfy the requirement for the offeror's own published commercial price list and a certification of the offeror's own substantial commercial sales of the item.

The protest is denied.



James F. Hinchman
General Counsel